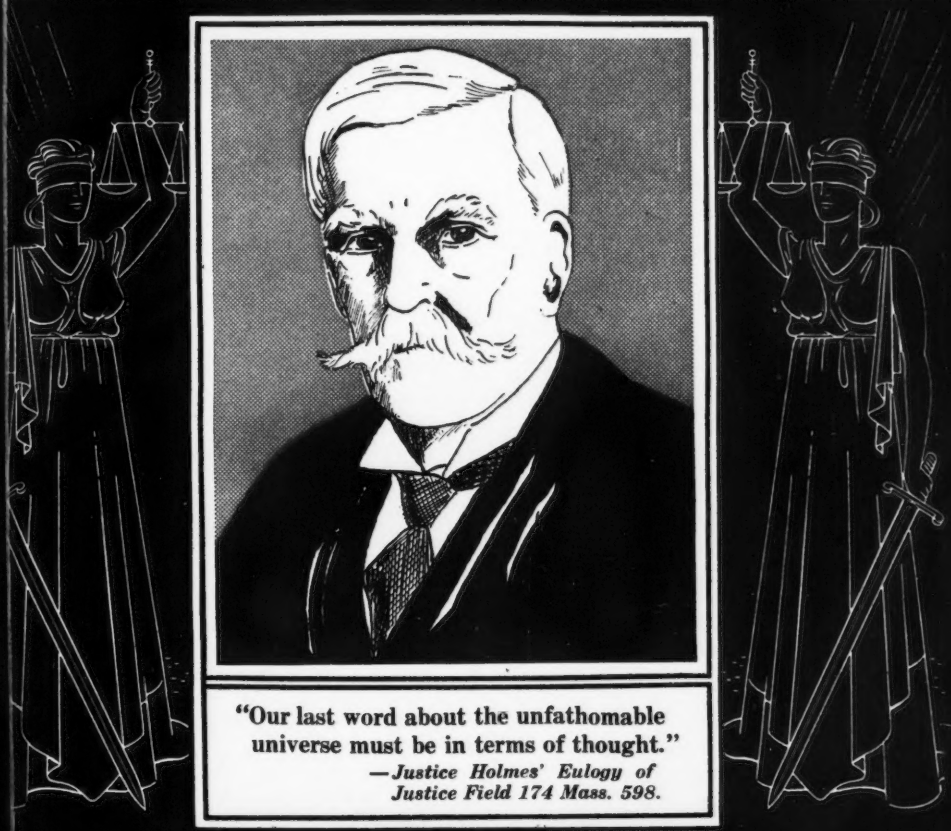
CASE AND COMMENT



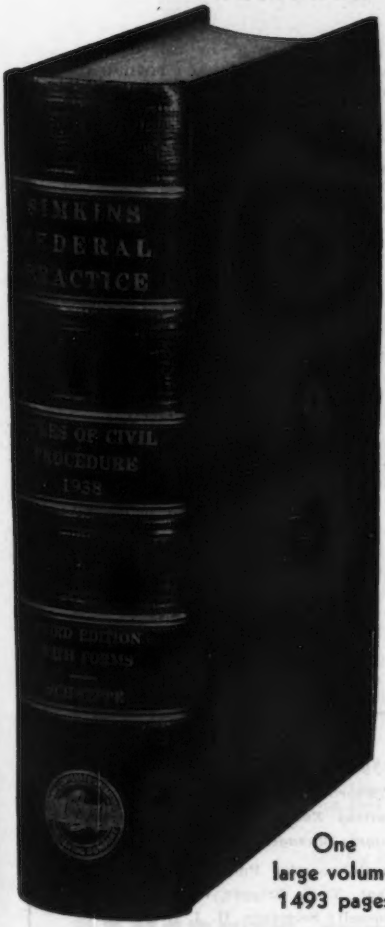
"Our last word about the unfathomable universe must be in terms of thought."
—Justice Holmes' Eulogy of Justice Field 174 Mass. 598.

VOL. 49 FALL • 1943 NO. 1

Simkins FEDERAL PRACTICE WITH FORMS

THIRD EDITION—1938

TOGETHER WITH 1942 POCKET SUPPLEMENT



One large volume 1493 pages

by ALFRED JOHN SCHWEPPE
of the Seattle Bar

THE new Third Edition of Simkins' Federal Practice covers fully the new Rules and is a real up-to-date treatise on Federal Practice and Venue.

It also contains chapters on Removal of Causes, Federal Court Appeals, including Appeals from the State Courts to the Supreme Court of the United States; and many matters relating to Trial Practice which are still in force and not contained in the new Civil Procedure Rules.

Therefore, in one volume the purchaser secures the new Rules and a discussion of same, and an up-to-the-minute work on Federal Practice, conforming to the new Federal Rules of Civil Procedure.

Price including 1942 Supplement
$15.00 *delivered*

1942 Supplement (329 pages) separate, **$3.50** *delivered*

THE LAWYERS CO-OPERATIVE PUBLISHING CO.
ROCHESTER, NEW YORK

Case and Comment

THE LAWYERS' MAGAZINE

Vol. 49 — No. 1

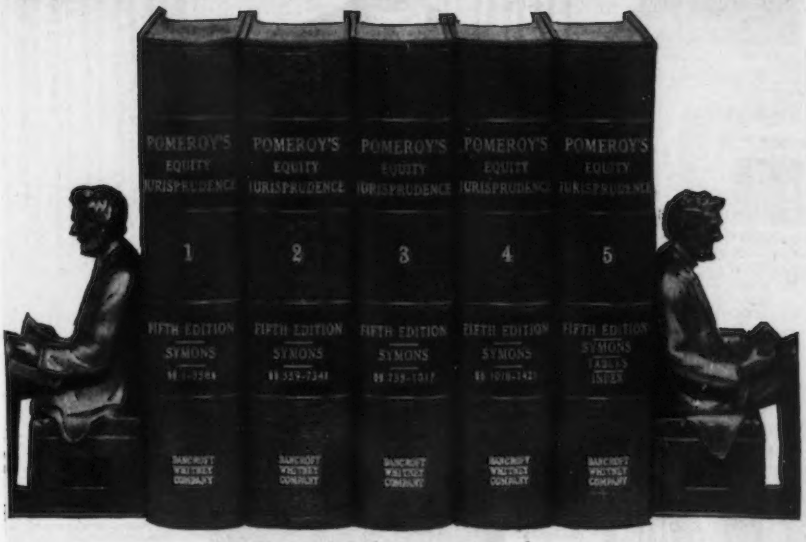
CONTENTS

Established 1894. Published by The Lawyers Co-operative Publishing Company. Chairman of the Board, G. M. Wood; President, T. C. Briggs; Vice-Presidents, E. A. Hale, F. A. Ratcliffe; Treasurer, A. J. Gosnell; Secretary, H. J. Henderson; Editor-in-Chief, G. H. Parmele

Office and Plant: Aqueduct Building, Rochester, N. Y.

POMEROY'S EQUITY JURISPRUDENCE

New Fifth Edition, 1941



PRACTICAL SUGGESTIONS . . . The astute lawyer, hedged about with difficulties arising from the rigid rules of law, will find in this new edition of Pomeroy suggestions of the highest practical value; and if he is engaged in a straight equity suit no surer guide can be found.

FACTUAL APPLICATIONS . . . The voluminous additions in the fifth edition strikingly illustrate the frequency with which courts administering both law and equity apply equitable principles to varying facts. The jurisdiction of equity to prevent a multiplicity of suits, for instance, is here stressed, for Pomeroy's statement of doctrine has been generally recognized as the classic expression of the "liberal rule".

PERSUASIVE . . . In cases of Fraud, Estoppel, Mistake, Notice, Priorities, Trusts, Equitable Interests, and the like, the words spoken by Pomeroy and the authorities which he reviews, freshened as they are in this new edition, have always been persuasive with the courts.

Sample Pages on Request

Published by

BANCROFT-WHITNEY COMPANY

200 McALLISTER STREET, SAN FRANCISCO

Press Association, Inc.

JUSTICE WILEY RUTLEDGE

Associate Justice of the United States Supreme Court

REMINISCENCES OF MR. JUSTICE HOLMES

By ATTORNEY-GENERAL FRANCIS BIDDLE

(Reprinted by permission from the Chicago Bar Record, May 1943)[1]

I FEEL thoroughly at home, and feeling at home will, with your permission, talk rather casually and rather informally about Holmes. I think he was a very great man, and a very great American, and that it is worth recalling some of the qualities of his greatness at this time.

I wrote a rather brief biography*—it can hardly be called that; it is a sketch, perhaps—of Justice Holmes, largely in the summer of 1940, the summer when I was Solicitor General. It was all started by a charming little organization in Lancaster, Pennsylvania, one of those very old, and I think very typical, small-town organizations, known as the Cleosophic Society. The Cleosophic Society asked me to read a paper on Holmes. The meeting was six months away—you know, when it is far enough away, and you don't have to do it at once, you accept more readily. I accepted and got going, and that paper grew into a little book.

I had collected some notes and stories, and background over the years. What seemed to me the significant thing about Holmes was the fact that he was so covered with the adulation of his admirers that he had almost disappeared as an actual human being. So lavish were the panegyrics which came as he grew older, both here and from England, that the actual essence of the man as a great man and a great human being had become obscured. I thought it would be interesting to try to re-create him, not as a judge merely, not only as a lawyer, but as a great and extraordinarily vivid personality, and this I attempted to do in my book.

Emerson's Influence

Now, thinking a good deal about my material, when I began to look into it a little more carefully, there were two or three things about Holmes which I thought had never been properly brought out. Some of the men who wrote to me afterwards disagreed with me, but I think most of those who were close to Holmes felt that there was at least an essence of truth in this approach.

One thing was the extraordinary influence of Emerson. Holmes hints that now and then. You may remember in the Pollock letters he says somewhere to Pollock, as an old man: "Emerson was the firebrand of my youth." And he didn't say those things casually. And then again, he speaks two or three times of Emerson in a way that makes you feel he had a great reverence for him. Holmes told me once that when he was discharged from the army he was tempted by the desire to be a philosopher. He admired Emerson tremendously, had seen him at his father's house. Emerson was one of the founders, with the Senior Holmes, and with that other great group of New Englanders, Ticknor and Lowell and all of them, of the Saturday Club, the luncheon club that every Saturday at three o'clock used to meet at the Parker House; and young Holmes was taken in due course, after he left the war.

I think the influence of Emerson is striking all through his work. After all, what Holmes brought to the common law when he wrote his great book, "The Common Law,"

[1] Address of Attorney-General Biddle before the Chicago Bar Association March 2, 1943.

* "Mr. Justice Holmes," by Francis Biddle.

was his conviction that, as he says in the opening chapter: "The life of the law has not been logic: it has been experience." Experience suggests the kind of intuition that you bring to the stated facts. Holmes brought back law from the somewhat static condition that had persisted as a result of the enormous influence of Blackstone on American legal thinking, and re-created in the minds of the bar and in the minds of the courts the knowledge that law, like any expression of life, was something fluid and experimental and alive. That was one of Holmes' great contributions to the law, and something he owed very much to Emerson. That is the first thing, then, that seemed to be important—the influence of Emerson.

Holmes' Father

The second thing that I thought interesting, from a few hints he dropped and from a letter here and there, and from talking to men who had known Holmes well, was Holmes' relation to his father. His father, of course, was the toast of the town. He was the wittiest, the most popular, the most cultivated individual—a leader of that extraordinary renascence in New England. When he went to England on his famous lecture tour in the eighties, all England went wild over him; the students sang, "Holmes Sweet Holmes," when he went to Oxford; he was showered with degrees.

The old fellow was fond of making puns, and he had a horrible custom (referred to here and there) of giving an extra helping of marmalade to the child who said the funniest thing at the breakfast table—a pretty tough life, to have to say something witty at breakfast on a New England morning, to get that second helping!

One of the things that drove the younger Holmes, who was a tremendously ambitious person, was the feeling that he had to do as well or even better than his father. It was a kind of friendly rivalry between them. And I think, too, there was a quality about his father which always played down Wendell, as he was called, and kept him in the relation, always, of a son to a father, which, after the son is grown up, and sometimes even before, is hard to take.

Let me read you just a couple of letters that the senior wrote about his son. I think they give you this feeling. The first was after young Holmes had been through the law school, and wanted to go to England. His father writes to John Lothrop Motley, the great historian, who had been representing his country in diplomatic posts in St. Petersburg, Florence, all over the world—the great old man who had lived the great life. Holmes wants Motley to give the boy some letters to men in England, to Hughes, to John Stuart Mill, whom young Wendell admired tremendously. The father writes this with a little note of depreciation:

> "My son Oliver Wendell H., Jr., now commonly styled Lieutenant-Colonel, thinks of visiting Europe in the course of a few months, and wants me to ask you for a line of introduction to John Stuart Mill and to Hughes. I give his message or request without urging it. He is a presentable youth, with fair antecedents, and is more familiar with Mill's writings than most fellows of his years. If it like your Excellency to send me two brief notes for him, it would please us both, but not if it is a trouble to you."

Then, even more, when Holmes at forty-one was appointed to the Supreme Court of Massachusetts, Dr. Holmes writes to his old friend, Mrs. Kellogg, as follows:

> "Thank you for all the pleasant words about the Judge. To think of it, my little boy a judge, and able to send me to jail if I don't behave myself!"

Imagine the "little boy's" resentment!

Contradictions and Unity

Then it seemed to me that another interesting thing about Holmes was that he was full of contradictions, and yet through his strength of character, and wisdom, if you like, managed to fuse all of those contradictions into a single purpose. You never felt he faltered on his path or was uncertain of his direction. You always felt that even as a young man he knew where he wanted to go and went for it, and went for it hard.

The contradictions? Well, for instance, his curious New England parsimony, his feeling that he ought not to spend five dollars if he didn't have to, on anything. An illustration is his relation to Wu, the young Chinese scholar who corresponded with him for a period of ten years in the middle of the Chinese Revolution. He writes to Holmes, then an old man nearing his eighties, and asks him for a hundred dollars, and Holmes is amazed to think that any fellow would ask him to lend him money; he wasn't brought up that way. And he didn't answer the letter.

And what happens the next year? All the generosity and sweetness of Holmes' character comes out when he finds Wu wants to get a scholarship at Harvard, and he sends a tidy sum to Roscoe Pound to help him along—a rather nice balance.

You feel that strong New England inherited frugality. I remember very well his saying to me, coming down the steps—he was going to a funeral, I don't know whose it was (I wouldn't say if I did know, but frankly, I don't)—he said, "Biddle, don't you think it is all right to wear your second best coat to the funeral of a second-rate man?" Could anything be more delightfully New England?

Skepticism and Faith

Perhaps the most striking example of these contradictions, which he seemed to be able to fuse, was—how shall I say it?—his skepticism and his faith, running through everything he did. On one side he was a complete skeptic, religiously, philosophically—he thought all philosophies were but wishful thinking. He distrusted generalities and spent his life formulating them. And he distrusted modern notions. He believed that a great deal of modern social legislation was but tinkering. He was brought up on John Stuart Mill and Malthus, and until he died he believed in both of their teachings.

On the other side he had a passionate faith in life, which comes out in his speeches, and which I think was largely influenced by his experience of four years in the Civil War. He was wounded four times. To endure the kind of things that kept happening to a soldier, one had to have faith, when very often one couldn't see the end, and sometimes, even the purpose.

It was a faith in being active and alive, in being sensitive, and enjoying the things that life brings; the faith of a positive man, who lived grandly and on a superb level. This was the most striking contrast to his skepticism.

When I began to think about these things, we weren't probably very far away from another war; it was the summer of 1940. Something of the faith of this old soldier, who was such an American, who was so imbued with the background, the sources, the history, and the feeling of America, who so completely loved America—that faith would now be worth remembering. And I had a feeling, although history alone will tell, that Holmes was going to live as one of our national heroes.

The Soldier

Let me quote from *The Soldier's Faith*, which was one of his great speeches (and his speeches are superb;

there are not many), written in 1895 and addressed to the graduating class of Harvard of that year, a speech about war which seemed to me peculiarly fitting two years ago, when we were wavering and uncertain as to the direction this war would take:

"War," he said, "when you are at it, is horrible and dull; it is only when the time is past that you see that its message was divine. I hope it may be long before we are called again to sit at that master's feet"—and this is what I think significant—"but some teacher of the kind we all need. In this snug, over-safe corner of the world we need it, that we may realize that our comfortable routine is no eternal necessity of things, but merely a little space of calm in the midst of the tempestuous untamed screaming of the world, and in order that we may be ready for danger."

Overlap of History

Holmes had a sense of what I call in this little book "the overlap" of history. I think that is what made many of his opinions so important, because as a scholar and thinker and historian he was reaching far back in our roots. Often one feels, in some of the less-considered opinions that we read today, that those who write them are dealing solely with contemporary events, without the significance of the whole flow of American life in coloring those events.

He often talked to me about this. Once when he was eighty years old, Mrs. Holmes gave a surprise party in Washington for the secretaries. It so happened that my boy, who is now in the army, had just been born. He was a week old. We went to the party, and it was very nice. Some pre-Prohibition champagne was left over. The old Judge, who was a very moderate man in his personal habits, smoked an extra cigar that night. He usually smoked two cigars a day, one after breakfast and one after dinner; but on that notable occasion, he smoked one extra cigar.

I was in Washington on his eighty-third birthday, and I sent some roses and on the card I wrote: "I can always remember how old my boy is, because he is just eighty years younger than you."

He wrote this letter to my boy, who was then three years old.

"My dear Boy: Your charming nosegay speaks to me of the future. Some day you may like to remember an old man who spoke to you of the past. My grandmother died when I was fighting in the battle before Richmond in 1862. I remember her well and she remembered moving out of Boston when the British troops came in at the beginning of the Revolution. Later in London I talked with a man who had been a school mate of Lord Byron and a friend of Charles Lamb. This will mean nothing to you now, but if you remember it some day it will carry you back a good way. Meantime I thank you and hope that we may meet."

Friendships

Holmes had a lot of interesting friends. One of the most interesting was Owen Wister. Holmes' letters to Wister are very interesting. Wister's mother was a daughter of Fannie Kemble. I knew Mr. Wister well, and his son sent me some letters of Holmes to his father, most of which had not been published.

Wister Letters

One reason Holmes liked Wister so much was that Wister was very much a man of the world. He lived abroad a good deal, was a handsome, dashing, talented young man. He had been a pupil of Liszt, had thought of studying to be a musician, and was a senior at Harvard when Holmes went on the bench. I suspect Holmes found the Boston of his day a little gray and a little dull. I think he was never really recognized in Boston, and that what really stimulated him was coming to Washington and being surrounded with much more invigorating influences. The Wister letters are delightful. I am going to give you just a couple of excerpts from them.

Holmes has been reading Dante. He writes to Wister:

"I found the intensity of Dante's spiritual rapture so thrilling and absorbing that I could think of little else, and the song of his words is divine. Shakespeare will say a few words now and then that seem the beginning of the road to paradise ("In Belmont lives a Lady," etc.). But Dante does it every twenty lines, and he carries you there too. It is not merely the Italian. When I read the answer to him of the troubadour Arnaut, *'Jeu sui Arnaut, que plor e vau cantan,'* I had to rush out of doors and walk it off. He weeps for he is still in purgatory, but he is a poet and a troubadour and he goes singing through his tears."

And a little later he says Dante is all very well, but he has been reading Rabelais, and Rabelais is grand.

"What temperament, what gusto. Everything begins to hum—like culture in Chicago. . . . And what a seed book, how many germs of Swift, Sterne, perhaps even Thackeray. You see I am reading now for the Day of Judgment, so as not to dread if I am called up on some book that every gentleman is expected to have read. But I have jawed enough . . . Your aged friend (I shall be seventy at my next birthday!)"

Wister always meant to Holmes something young and gay. He told him funny stories. The last time Wister saw the old man was a few months before he died. He told a story to the old judge, and Holmes looked at him (he was very old, ninety-three) vaguely, and said, "I am sorry, Whisker," his name for Wister, "I didn't get the drift of that." Then his old eyes blazed and he said: "But if I have to, Whisker, I can pull my old brains together and call a man a so and so."

Holmes complains to Wister about the *certiorari*. Those ceaseless *certiorari* pursue him everywhere; night and day, summer and winter, Washington or Beverly, the *certiorari* are hounding him, and he never has leisure to read. He kept a list of most of his reading. In one year he read seventy-five books—philosophy, history, economics, interspersed with French novels, everything on earth. Well, he writes to Wister:

"I never had a piece of bread
Particularly long and wide
But fell upon the sanded floor,
And always on the buttered side."

His friendships were interesting. I remember when I was in Washington in 1911, his intimacy began with Senator Beveridge. I can't imagine two men more different. Holmes didn't like Beveridge at first. Beveridge seemed conceited, boastful and rather opinionated. He came to dinner one night at the Holmes', and afterward the Justice said of the Senator: "It wriggles." By that he meant the early protoplasm when life begins shows a faint wriggling condition. So when he said, "It wriggles," he meant, "The fellow has something, just the same."

The Black Book

Holmes had a little book called "the black book," started when he was writing "The Common Law." He put down notes on his reading—he did an enormous amount of reading—for "The Common Law." Later he listed the books that he read—forty years of reading.

There are some charming details in the Black Book. The notes are entered in ink. I found on one page in small handwriting in pencil the notation in 1925: "Crocuses out in White House grounds February 23." Then under that, "1926—about March 20." The next year he recorded: "March 18th cherry trees by the basin in flower," and "April 12th, blood root." Farther back, a list of the secretaries.

The Black Book has never been published. Justice Holmes' executor, Mr. Palfrey, gave me permission to use some excerpts.

JOSEPH HENRY BEALE

By JUSTICE FELIX FRANKFURTER

(Reprinted by permission from the March 1943 Harvard Law Review)

In the richness and range of his intellectual interests, if not in his temperament, Joseph Henry Beale was an eighteenth century figure. Certainly no modern comes to mind of whom it could be more truly said that he took all law for his province. He broke through the confines of even generous specialization within the comprehensive legal curriculum not because he was a spawner of systems or a pedantic pursuer of learning. Driven by zest for life and ardor for law's share in it, he went from one subject to another quite unrelated as judged by ordinary considerations of systematic scholarship. And so it requires the competence of a good-sized law faculty to do justice to the influence which Professor Beale exerted upon law through his writings, his legislative proposals and, above all, his teaching.

But generations of law students can bring their own competent testimony of mind and heart to the significance of his teaching. When we recall that it has fallen to the lot of no other American law teacher, barring only his legal twin, Professor Williston, to train such a succession of lawyers for nearly half a century, we have some measure of the uses to which Professor Beale put his remarkable gifts. And when we consider further the share these lawyers have had in shaping the history of a country in which the sway of the law is as pervasive as in America, we begin to see in proper perspective the impress upon his times, as well as its perdurance, of this modest scholar laboring far from the madding crowd.

So vivid and provocative a personality as that of Professor Beale scratched different temperaments differently, and differently at different periods of his teaching. But if the chief function of a teacher be that of a midwife, then surely he was hugely successful in bringing minds to life. When my generation arrived at Austin Hall, we entered into a glorious inheritance. The heavy sea of controversy which Langdell's innovations had stirred was wholly calmed, and under the beloved leadership of Dean Ames the Harvard Law School was sailing on placid waters with a pride that stimulated new achievement. Fortunately, also, it was the time before the School had become a leviathan—when greatness unembarrassed by bigness was the exclusive ambition of the School. This meant that the faculty was small enough to permit insistence on fastidious standards of excellence, and that students had opportunity to know all the professors and most of them on terms of intellectual intimacy. Two of the great were already gone from the School. Langdell could still be seen—a venerable old figure tapping his way along the streets of Cambridge. And that James Bradley Thayer was no more when my class entered the School has been a lifelong bereavement for at least one member of that class. The atmosphere of Austin Hall in those days was charged with vitality, and not merely by contrast with the inadequacies, for most of us, of our undergraduate days. The discussions, both in and outside the classroom, stirred in us the feeling that we were all engaged in an exciting enterprise. And no classroom was more electric than that in which Joey Beale was at the desk.

Normally it was teaching by combat and a free-for-all. Quarter was neither given nor asked. Often, minds good but slow or timid were laid by the heel and not always by the serene judgment of reason. Verbal fencing and specious dialectic were not wholly eschewed in what was as much an effort to sharpen wits as it was to discover legal truths. A colleague once remarked that Professor Beale was the theologian of the law, so skilful was he in evolving doctrines and so resourceful in defending them. But he appeared more dogmatist than he was. At least his dogmas were contemporaneous and not immutable, for, unlike Luther, he could also do otherwise. For him teaching law was an attempt to bring rational order out of the welter of cases, leaving practice and adjudication to make the necessary inroads upon mere rational harmony. But although he used no uncouth jargon he knew that the future grows out of the past and not merely out of itself.

Those days in the School illustrate that in a faculty of predominantly great teachers, issues touching the formal contents of a curriculum recede into appropriately subordinate importance. In my time we were not taught legal ethics except atmospherically, in that Dean Ames' course on Trusts was suffused with the most exquisite standards for right conduct. Likewise, we had no formal course in Jurisprudence. Roscoe Pound had not yet come, and John Chipman Gray had stopped giving the lectures which later, like vintage burgundy, were given to the world in his wise and delicious little volume *The Nature and Sources of the Law*. But every really good course in law is a course in Jurisprudence. For us this was peculiarly true of Professor Beale's course on the Conflict of Laws. The nature of the subject and the bent of Professor Beale's mind made the course an exhilarating inquiry into the presuppositions of one's legal thinking. It challenged all the smooth words of the legal vocabulary like "right" and "remedy" and "jurisdiction" and the whole tribe of them that deceptively summarize too variant situations and more often than not put analysis to sleep. Long before phrase-mongers talked about "fundamental legal conceptions" and the word "semantics" was revealed to the multitude, Professor Beale imparted to thousands of students an awareness of these problems and spurred in them the critical desire to think things and not words. Culture, someone has said, is the deposit of things forgotten. Dogmas which Professor Beale expounded may long since have evaporated from our memory, as from time to time they were recanted by him. But he imparted ferment—the most precious quality of a teacher—which supplies exhilarating energy even when we are not aware of its source and continues gratefully in memory even when it can no longer be translated into action.

The leaves are falling as they have fallen in season and sometimes out of season, but the great oak of the Harvard Law School stands—its deep roots nourished by noble tradition and high purpose.

TEST CASE

By ABRAHAM BRODY
(New York City Bar)

I was reading the newspaper to beguile the time while the assistant district attorney called the criminal calendar in the federal court. As each name was announced the defendant would walk up the aisle and stand before the judge. Some were accompanied by their lawyers. My case was at the end of the calendar and I had no choice but wait until the whole business was over.

"Lum Yum Suey," called the assistant and a ripple of mirth went over the room at the mere sound of the name.

A slight yellow wizened old man with hollow cheeks and protruding teeth shuffled up to the bar followed by another gentleman of the same pigmentation. The first one was obviously the defendant; the second proved to be a friend who acted as interpreter. Lum Yum Suey grinned amiably at the judge. The court clerk read the indictment.

"You are charged in two counts with making sales of heroin on two separate occasions. Do you have a lawyer?"

"No," replied the interpreter.

"Have you any money to retain a lawyer?" asked the white-haired judge.

"He has no money," answered the interpreter.

"Who bailed him out?"

"He was bailed out by a Chinese society."

"Does he want a lawyer assigned to him?"

After a moment of parley the interpreter said: "Yes, he wants a lawyer."

I had been watching the scene with mild interest but I woke with a start when Judge Parker called out my name.

"Mr. Rayburn, will you be good enough and confer with the defendant?"

I found myself standing on my feet. "I'd like to, Your Honor, but I haven't learned to talk Chinese yet."

The courtroom enjoyed this. "The interpreter will help you," smiled Judge Parker.

This was how I found myself representing a Chinese client for the first time in my legal career. Out in the corridor, Lum Yum Suey, his friend and myself had a three-cornered consultation. It developed that Lum Y. Suey had a wife and children in Hongkong then held by the Japanese. A dishwasher by trade Lum eked out barely enough to keep body and soul together. His only vice—drugs—bad enough from the viewpoint of an Occidental but not an Oriental—had brought him to grief with the law on innumerable occasions. He had a long record of convictions for possession of narcotics. This was the first time, however, that he was charged with making sales. He frankly admitted that he had made the sales.

"Then he is guilty," I said.

"He is guilty," said the interpreter. "He would like to get an adjournment of sentence to enable him to get his affairs in order. Could you do that?"

"I think so," I said.

On my advice Lum Yum Suey pleaded guilty to the indictment. My request for an adjournment of sentence was granted on consent of the assistant and the case was put over for two weeks.

I jotted a memorandum in my diary and gave the matter no more thought. Lucky for me that the case could be disposed of without wasting too much time. I would make one appearance on the date of sentence and that would be the end.

When the case was called on the adjourned date I answered "ready for sentence." But the defendant wasn't there. The bailiff was ordered to call out the name in the corridor. His voice could be heard booming outside: "Lum Yum Suey." No response. I requested that the case be marked "second call." Shortly after I saw entering into the courtroom the man who had acted as interpreter. He motioned me out into the hall.

"Where is Lum Yum Suey?" I asked.

"He was arrested by city police two days ago. Now he is in Tombs."

"What for?"

"For possession of morphine. He wants talk to you in Tombs."

I reminded Lum's friend that I had been assigned counsel to render service gratis and that I undertook to handle the case only in the federal court.

"You will be paid," he assured me.

I communicated to the court the reason for my client's default in appearance. The judge ordered a bench warrant issue forthwith.

Never was client more glad to see his lawyer than was Lum Yum Suey when I visited him in the Tombs. We sat across the table in the counsel room. Lum grinned happily at me. He spoke enough "chop suey" English to make himself understood.

"Me in house with two friends. Cops come. Cops lock me up," he explained.

"You had three decks of morphine in your pocket and two ounces more in the drawer. This while you were on bail on a similar charge in the federal court." I was repeating what I had read in the complaint.

"Yes, sah, me have three decks in pocket. Me plead guilty in Special Sessions."

"If you pleaded guilty," I said "the case is over. What more can I do?" He would be sentenced in the Court of Special Sessions, then remanded to the federal court for sentence there. I failed to see what I could do as a lawyer.

"Me want go back federal court," said Lum, "me want go Lexington. Me no like city jail. Me like Lexington." By Lexington he meant the United States Hospital at Lexington, Kentucky, one of the most modern institutions for drug addicts in the country. Inmates were not treated as convicts but rather as patients. Lum knew the city jails only too well and didn't like them.

"You get me Lexington. I pay," he kept on pleading. "Take me out here. Don't like here. Take me out."

"I'll see what I can do," I said and left, wondering. Here was a neat problem indeed, a problem involving clash of jurisdictions. Lum Yum Suey was wanted by two authorities—the United States government and New York State. He had committed crimes in violation of the laws of both and would have to serve either in the federal or state prison, at least one at a time. And all he asked was to be sent to the federal prison which he preferred. New York should be only too happy to be rid of him, I reflected. If I could get him sentenced in the federal court first, the Court of Special Sessions might be willing to forgo sentence altogether.

I consulted with the U. S. assistant district attorney in charge of the case. I laid my cards on the table. "Lum likes Uncle Sam's jails better. Moreover he needs a reduction cure and the federal penitentiary is a better place than any in the state. It shouldn't make any difference to the sovereign people of New York wheth-

er he is in one jail or the other. If he could only be brought back to the District Court for sentence the federal court would have jurisdiction and New York could wait or whistle."

"That's easy," said the assistant, "I can have him brought over by an order of the federal court which has paramount jurisdiction. When does the case come up for sentence in Special Sessions?"

"To-morrow."

"Get an adjournment and I'll have the order prepared in the meantime."

Why, it was easy. I obtained the adjournment in Special Sessions and in two days the case was back in the federal court. There was Lum Yum Suey sitting next to the guard who had brought him over from the city Tombs.

I made what I modestly believed to be a moving plea. "The defendant," I said, "is a Chinese national. His wife and family are in Hongkong which as the Court is aware has been captured by the Japanese. He has not heard from his family now in two years and grief over their plight had made him use drugs in order to drown his misery. He does not commercialize in narcotics. When he does sell it is as an accommodation to fellow users. The defendant needs a cure and asks to be sent to Lexington."

The judge readily acceded to the request and directed the commitment of Lum Yum Suey to Lexington for 18 months. My job, I thought, was done.

To my stupefaction, after sentence, Lum Yum Suey was remanded in custody of the guard who had brought him from the Tombs instead of the United States Marshal. The guard led Yum into the corridor where he clamped a handcuff on him.

"What does all this mean?" I asked.

"I don't know," said the guard, "my orders were to bring him here and take him back."

The thing was a farce! Lum would be taken back to the Tombs and sentenced the following week in Special Sessions and the city jails would have him after all. He might as well never have been brought to the federal court. Physically he was in custody of the State court and would be dealt with there, the district court sentence notwithstanding.

I would play my last string, however. I would appeal to the sympathy of the three justices in Special Sessions and plead for a suspended sentence so that Lum Yum Suey might be allowed to do his bit for Uncle Sam. After all, what did it matter to them which jail he honored with his presence? The ends of justice would be served if Lum were taken out of circulation from among the decent and respectable citizens. Once the sentence was suspended Lum would be transferred into federal custody.

And so it was that on the fateful day of the second sentence I appeared ready to plead with all the eloquence at my command to induce the justices to give Lum Yum Suey a chance to go to the federal penitentiary. I argued and orated. They listened respectfully, then went into a huddle.

"The sentence of the court is," the presiding Justice declared finally, "that the defendant be sent to the New York City Penitentiary there to serve for an indeterminate period." One might just as well try to influence three statues. Lum was going to the city jail after all.

The injustice of it all stung me to the quick. I resolved not to take it lying down. I would fight it out to the end; win, lose or draw. After three hours of research in the library I had enough ammunition to start a war. I prepared a writ of habeas corpus addressed to the warden of the city jail directing him to produce the body of Lum Yum Suey in the U. S.

District Court and show cause why he should be thus detained by the warden. The writ was signed by a judge of the federal court and served on the warden who in strict obedience to the mandate produced the body of Lum Yum Suey on the date specified in the writ.

Lum Yum Suey was there all right grinning as usual and no little elated at the spectacle of all this fuss over him. So was the assistant district attorney of New York County in charge of appeals ready to battle me to a finish. I was prepared with a long brief of authorities. I contended that the federal court had superior jurisdiction and since Lum had been sentenced there first no action of a state court could interfere, halt or interrupt that sentence unless the Attorney General of the United States waived or relinquished him.

The district attorney contended that under the rule of comity the jurisdiction which obtained custody first would first be entitled to deal with him. Since Lum had been in physical custody of the state court it had the right to administer punishment first. I retorted that while he was physically in state custody he was technically in custody of the United States since bail in theory meant no more than the extension of jail beyond the prison walls.

The judge being a Republican who believed in central versus state power took my view of the case, sustained the writ and ordered Lum transferred from the state penitentiary to the hospital at Lexington. I walked out of the courtroom on air.

My exultation was short-lived. A week later I received a notice of appeal from the New York District Attorney's office appealing the decision to the Circuit Court of Appeals, the highest federal court next to the Supreme Court.

Lum was meantime transferred to Lexington after having served 30 days in the penitentiary. Appeals are long drawn out matters and take time. Before the appeal was perfected and reached for argument another three months had elapsed. Two months more passed by before the decision came down. The Circuit Court by a majority of two to one reversed the District Court and ordered Lum sent back to the penitentiary. The decision was accompanied by a long opinion and a dissenting opinion twice as long. The Circuit Court held in effect that the rule of comity required that whosoever had custody first was entitled to dispose of his living remains. "Custody," said the court, "meant physical and not technical custody. If the United States wanted Lum it would have to wait until the state got through with him."

Back to Riker's Island went Lum Yum Suey after an absence of six months. I had enough of the case and washed my hands of the business. If New York and the United States both wanted Lum so badly let them fight it out between themselves. Lum's supplicating letter went unanswered.

One morning I received a telephone from the U. S. Attorney's office. "The United States attorney would like to see you," said the lady's voice on the other side of the telephone.

I was introduced to the office of the federal district attorney by a business-like young girl. "What do you intend to do with the Lum Yum Suey case?" I was asked.

"Nothing at all," I said, "I have had enough of it."

"Are you not going to appeal?"

"Certainly not. I have done all I could for my client. I have received hardly more than thanks for gratitude."

"The government," said the district attorney, "is very much interested in the case. There is a very important question of conflict of laws involved

and it is highly desirable that the highest court pass on it so that the matter could be set at rest. You see it is a test case."

"Quite so. Let the government fight it out with New York."

"The only one who can technically appeal is your client."

"My client," I said "is living by the grace and as the guest of New York and could hardly finance the appeal."

"This office will co-operate in every respect," the district attorney assured me. His word was his bond and I immediately proceeded to obtain a writ of certiorari to the Supreme Court.

For the benefit of the layman let it be said that appeals to the United States Supreme Court cannot be taken, except in few cases, as a matter of right. The Court itself must first consider whether it will entertain an appeal. By a writ of certiorari the record in the lower court is brought up for review. After hearing arguments and the record the Court decides whether the case is important enough to be received on appeal. When the Court resolves the question in the affirmative the writ of certiorari is granted and the appeal entertained.

The job of preparing the writ, the memorandum and the trip to Washington involved considerable time. My first case before the highest court of the land was not to be handled in slipshod fashion. How I rehearsed my argument all the way to Washington and all that sleepless night in the hotel. The assistance of the U. S. Attorney proved valuable indeed. I trembled no little when I arose to deliver my argument. As usual the matter proved to be easier than I expected.

The Court reserved decision and I returned to New York to attend to business whilst the court debated the question. At last the decision came. Certiorari was granted. This meant the Court was in doubt as to the accuracy of the ruling in the lower court. There was a good chance for a reversal. It was wonderful news.

Instead of writing to Lum Yum Suey I resolved to carry the message to him in person. A victory in the Supreme Court is not a small matter for a lawyer. It was now nearly a year since Lum Yum Suey was first committed. It was a beautiful day and the ride to Riker's Island would be a diversion. I therefore obtained a permit from the Department of Correction, rode uptown and ferried across to the island. At the warden's office, I asked permission to interview my client.

The clerk looked through his files for the name and came back with the record of the case.

"Did you say Lum Yum Suey? Is this a narcotics case?"

"Yes, he was committed about a year ago in the Court of Special Sessions."

"Sorry," said the clerk, "our records show that this man died about two weeks ago. His body has been sent to his family."

"I am sorry to hear it," I said and walked out of the office.

That was the end of the case. The supreme court would not hear the appeal after all. Lum's death made the question academic and as far as the law is concerned. there is no final ruling on it in the highest court yet.

LISTEN MR. LAWMAKER

By HON. THOMAS C. DESMOND, NEWBURGH, N. Y.

(Reprinted by permission from the January 1943 Rotarian)

CAN you imagine a humble citizen of the Reich writing a high official that he ought to dig potatoes and let a better man sit at his desk?

No, neither can I. But that happens every day in my country. Here it is the esteemed privilege of *any* citizen, from Wall Street to Main Street, to tell *any* public official precisely what he thinks of him, his acts and his lack of them. And is this prerogative exercised! John Q. Citizen sounds off to his Congressman to the tempo of 110,000 letters, postcards, and telegrams each ordinary Congressional day, and the figure may run to half a million when John Q. is really aroused. The President of the United States receives some 3,500 letters daily, often triple that after a fireside chat or when some issue is afire.

Having been on the receiving end of 100,000 letters during my 12 years as a State senator, I know that these communications of lawmakers are a vital literature of the masses. Through and between their lines throbs the pulse of the hope, the anguish, the indignation, the ideals, the courage of the people. They capture the full flavor of democracy. Some are self-seeking to be sure, but their most common denominator is a concern for their country. In wartime we call it patriotism.

Some letters are on tinted stationery, perfumed, and bearing an embossed crest. Others are on cheap, yellowed, tablet paper, scrawled with a stub of a pencil. What such letters don't say is as interesting to me as what they do. Sometimes as I survey my daily pail of mail and think of the humor and pathos it holds, I long for the Shakespearean gift to interpret humanity as it is revealed to me. Alongside what these letters tell, a broadway play is a cheap imitation of life.

And what do these letters talk about? Well, about a third advise us how we should vote on specific bills. One storekeeper writes: "Please vote against the 2 per cent sales-tax bill. Such a tax will not only hurt my business, but it will also drive business out of the State." A security salesman states: "I'm hot under the collar, but it's not your fault. You probably feel the same way about the Wagner Bill to pin a SEC on the State. We are suffering from too much government now. If you legislators would spend the whole session repealing laws, it would do a lot of good. At any rate, kick out that Wagner Bill." A stenographer urges me to vote for a bill to prohibit subway fares from being more than 5 cents. A motorist recommends that I vote for my own bill to control billboards.

Another third of the letters to lawmakers express the feeling that there is something wrong in the country and that I ought to get busy and fix it up at once. They ask us to investigate everything from Bundists in war industries to the failure of city officials to have garbage collected daily.

One woman writes: "You are not a Federal Senator, but you have influence. Please use it to have Martinique taken over by the United States. It's a menace."

Another points out that from "the very beginning of our civilization, we, the people, have been taxed, if not from the mother country, England, at the first stages of the Colonies, but also in the early years of our Government when taxes were placed on corn whisky. When the colonists rebelled

against England for taxing the tea unfairly, what did they do? They overturned a boatload of tea, hence showing their refusal to contend with the tax. But we of the modern world are much more conservative now, and therefore put our disapproval on paper, a less radical means." All this, preliminary to denouncing America's present tax system.

Occasionally a constituent will express himself in poetry. One such communication read:

> And this I do affirm,
> With life the guarantee.
> My liberty is mine, not thine.
> No man, no State,
> Shall e'er decree
> "Henceforth, thou are not free."

Reading a statement I made urging State action to promote apprenticeship, a tailor wrote to me, pointing out the need for apprentice tailors. He said, in part:

> "In regards to Apprenticeship; The Tailoring has a big advantage of most any other trade: There is very little slack time in the Tailoring, a good Coatmaker, Trouser or vest, allways can find and has work. And even when he gets old he can work at his trade till he is 90 or more years. . . . I could go on and talk to you with my typewriter, for hours and hours, but I will say, if you can be instrumental of learning just a few Boys and Girls, the Making of Garment, especially those in Reformatories, the THANKS of every well thinking CITIZEN will be yours. I am writing this at random and my tow fingers will hitt the wrong key once in a while, I am NOT A TYPIST, BUT AM A DARN GOOD TAILOR and proud of it."

The folks back home rarely originate proposals—that is, they seldom suggest something new. Rather, they act as vetoers or approvers of action already proposed. The most vitriolic letters deal with the problem of industrial relations. The workingmen take pot shots at the bosses, and the employers hurl invectives at the labor leaders.

Many lawmakers believe that the letters they receive are more reliable than the highly touted public-opinion polls. In the polls you are limited to a "Yes" or "No" answer or some reply almost as brief. Through letters the voters express their views in full detail.

Recently I suggested publicly that it might be advisable for New York to consider adopting a plan already put into effect in 12 other States whereby homeowners are protected against jerry-built houses by requiring builders to show their competence. The next day's mail brought a torrent of approving letters and a few in opposition, including this gem from a builder: "I have been building homes for hundreds of years. Of all the dirty, slimy rat methods this idea is worse than a spies work and you should be seized by the FBI and shipped out of the nation as a man without a country, for such a treacherous conspiracy."

Balancing and far outnumbering such letters of abuse are the ones of praise: "It is gratifying to have at least one engineer in the State Legislature and to observe the understanding which underlies the bills you introduce," writes a prominent engineer. A high-school principal declares: "It is comforting, I assure you, to know that among the legislators there are those like yourself who are ready to fight for what they conscientiously and honestly believe to be fair, square, and just."

A letter from a farmer tells a pitiful story: "Pa and I are broke. We worked the farm in good times and bad, and somehow always managed to scrape along. But now we won't be able to make the mortgage payment. We counted on our corn crop coming through, but the cold spell killed the crop. Pa couldn't stand losing the farm. Do you know where I can get some work or how I can get a government loan to cover the mortgage? Pa and I will be forever grateful if you

help us out." We referred the letter to the proper agency and he soon secured assistance.

There are many similar appeals. Some make one think that their writers believe a lawmaker is God's messenger boy on earth.

One of the most interesting types of letters frequently received is from prison inmates. Prisoners charge that they have been framed, that they are unjustly imprisoned. There is little that a lawmaker can do except turn these letters over to the attorney general for investigation. No 46877 at Auburn in my State wrote to me recently asking that I sponsor a bill to give prisoners six months off their sentence each year for good behavior. He had been sentenced to 20 years' imprisonment for a holdup and wanted to have it cut to ten by means of this legislation.

Letters from the folks back home require that a lawmaker act as vocational counsellor, guide to young married couples, industrial consultant, dairy expert, economist, and legal advisor, and, like the "Information Please" experts, he is expected to have an encyclopedic amount of data in his head.

Don't let the cynics fool you—your letters *do* produce results, for legislators rely on mail from the folks back home to inform them of shifts of public opinion. And while many will, when they deem it advisable, vote against the wishes expressed in letters, almost all lawmakers—United States Representatives and Senators and State legislators—make decisions only after analyzing the mail. One of the best examples of the strength of the mail vote in New York occurred during a recent budget fight between the Legislature and the Governor. Letters poured in day after day. Slash the budget! The demand was unmistakable. It was spontaneous and it was in earnest. The avalanche of communications from the folks back home strengthened the courage of some of the lawmakers who had been sitting on the fence and enabled the Legislature to slice the budget and eliminate tax increases.

Most lawmakers try to read every letter from a constituent, and to answer it within 24 hours, injecting some personal note if possible. Lawmakers who don't pay attention to their mail soon become ex-lawmakers. I remember visiting a colleague and watching him divide his mail into two piles. One was thrown promptly into the wastebasket; the other, a very small batch, he handed to his secretary and barked: "Here, tell 'em they don't know what it's all about!" The voters of his district soon replaced him. He did not know that the first law of political survival is: "Take care of your mail promptly and personally if possible, but take care of your mail."

Letters to lawmakers *are* an important cog in our democratic machine. So important are they that I offer these suggestions on how to make yours effective:

Don't waste money on special-delivery letters or telegrams. They don't receive better attention than ordinary letters.

Signing a form letter or a petition does no harm, but it has very little pressure value.

When discussing a bill, give an adequate description and number of the bill if possible. Letters are frequently received, stating: "Vote for the Smith Bill." Senator Smith may have dozens of bills. So be specific.

Address your lawmaker by his right name and write to him or to the chairman of the committee handling the bill.

Write briefly, but cover all the necessary points.

We who make your laws would not for an instant propose that you stop writing to us. Your letters cause us considerable concern and laborious work, but we are elected to represent you. We can represent you best if we know what you need and what you want. So keep your letters coming. Where can you get a better buy—democracy at the price of a 3-cent stamp?

ADVICE ON PRACTICING IN INDIAN TERRITORY[1]

DEAR SIR:

I AM in receipt of your favor asking me what sort of opening there is here for a lawyer, stating that you have a notion of locating here and giving me your experience as a surveyor and attorney at law. I also note the photograph of yourself enclosed and that you are forty years of age.

While your experience in surveying would give you a decided advantage in land litigation in which you should be employed and while your picture indicates to me that you are a man of deep erudition, with keen power of analyses and profound knowledge of human nature you will notwithstanding these extraordinary advantages have formidable opposition at this bar. There are no pigmies here. While this town on account of its inland location and its remoteness from the railroad has not been an important faction in the civic political and legal affairs of the Territory and its bar has received little notice from the outside, yet from some legal contests that have taken place here, we know that some members of this bar hardly have a peer in the Territory. John H. Pitchford came here from Fort Smith, Ark. on account of his health. At Fort Smith he was a partner of Judge DuVal, one of the leading lawyers of that state, and enjoyed a large and lucrative practice. I understand it was with great regret that Judge DuVal consented to Mr. P's removal and nothing but the fact that the condition of Mr. P's health made a change imperative, would reconcile the Judge to his departure. Mr. P. also stood high in the Democratic Party when he resided at Fort Smith lacking at one time only a few hundred votes of receiving a nomination at the hands of that party for prosecuting attorney. This was a very high compliment in that populous district and especially when we consider that he ran against one of the most brilliant men in Fort Smith, Hon. Jo. Blank of whom you have no doubt heard. Mr. Pitchford had a fight with Jo during the campaign and chastised him severely for some lies that Jo has been telling on him. I suppose you have heard that Jo was removed from office before his term expired for taking bribes and other misconduct peculiar to the prosecuting attorney's office. I suppose these officers are exposed to great temptation oftentimes when they are offered large sums of money to nol pros. a case and when they are poor and in need of the money. However, I know little of it, having never been offered a bribe. It has been my misfortune to be hard up financially all my life and I have always rather shunned taking such an office for fear I might sell out and get myself into deeper trouble than simply being poor. I want to add that if the people of Fort Smith had given Pitchford the office he never would have sold out. He is one of the most honest lawyers I ever knew. I have heard him say that he never could even tell a lie without his conscience troubling him for some time, especially if he afterwards found out he could have gotten on just as well without telling the lie or if it failed to work its purpose or he was caught in it by the court or jury. By the way I can discern from your photo, that it would be the same way with you especially if the court called attention to the fact that you had lied or rebuked you even in the kindest way. I say that I know your conscience would pain you

[1] Letter written by J. B. Buster of Tahlequah, I. T. to L. B. Elkins of Mayfield, Kentucky, August 20th, 1901.
Submitted by Seth Boaz, Mayfield, Kentucky.

in that case. Pitchford is also a large portly and handsome man and that gives him additional advantage as a lawyer and as an orator he is not excelled by any one here unless it be by King or Hastings. (My modesty forbids that I should also except myself.) And this leads me to tell you of Mr. King the Silver tongued orator from Arkansas as he is often called. Indeed his powers in this respect are very remarkable. He can make a speech easier and with slighter provocation than any man I ever knew. I understand that he acquired his powers of oratory in the pulpit having been a minister until about his 35th year. Whether he was turned out of the church for some misconduct or retired of his own accord on account of insufficient support I never heard and tho' I have had many opportunities to ask him about the matter, I refrained from doing so because I knew he would not tell the truth about it. If King was turned out of the church I judge it must have been for lying from what I have observed of him in the practice of the law. Mr. King is just about your age, is a very handsome man, as polite as Chesterfield and on the whole, if you come here you will find him a formidable competitor. He is more noted as a criminal lawyer than as a civil.

I had almost forgotten to mention Hastings, because he has been away so long attending the sessions of the Dawes Commission that I have seen little of him of late. Mr. H. was attorney general of the Cherokee Nation at 25 years of age, Think of that! Well he is 35 years of age now and the intervening ten years have been passed in active practice. He has been in the employment of the Cherokee Nation nearly ever since he began practice. You know the Cherokee Nation would not have a green horn to represent it in the courts. Well, you would find Hastings "a foeman worthy of your steel."

There are several more lawyers here whose names I do not just now recollect and while as I said this is rather a strong bar many of the lawyers hardly make a living. I have seen many a time since my location here when to have received a $5.00 fee in cash would have pleased me greatly. This I consider a sad commentary on the place. When a lawyer is forced by the baying of the wolf at his door, to take his mind from the contemplation of the great truths of jurisprudence and concern himself with the groveling matters of money it is a clear loss to the science of jurisprudence. For myself I have always been forced to a contemplation of the question "WHEREWITHAL SHALL I BE FED AND CLOTHED" when I should have been studying the rule in the Shelley case, Executory devices or contingent reminders. If you came here and wish to put your mind on the law (and I would advise you to do so because as I said I can tell from your photo that you have a bright mind needing only the requisite study and cultivation to give you quite a good standing as a lawyer) I would advise you to bring plenty of money with you if convenient. You should keep this to yourself however so you will not be worried with requests for a loan. When you get here put your money in the Bank and ask Leon (he is the cashier) and Henry (that's the Bookkeeper) not to say anything about how much you have.

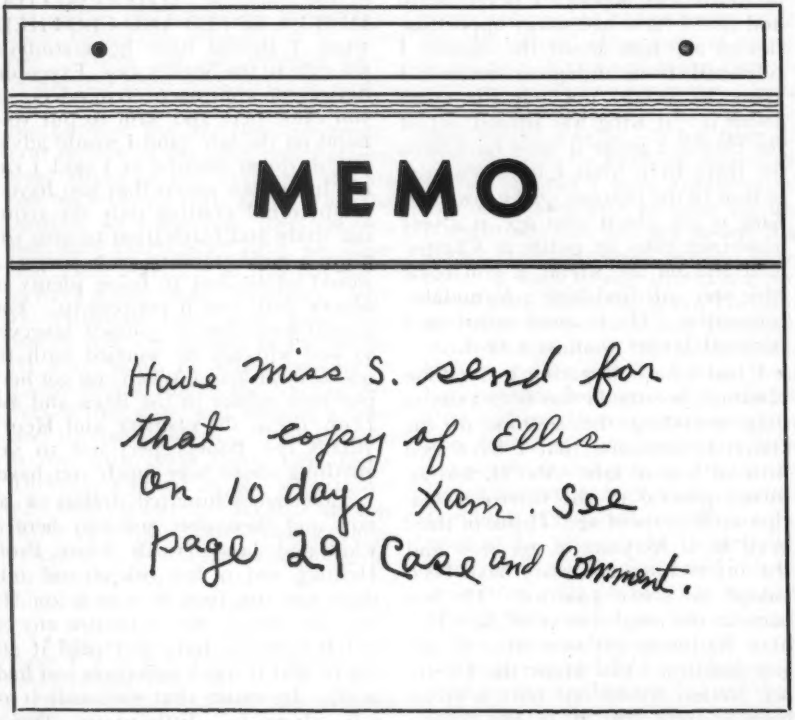
Take out a hundred dollars or so now and then after you stay here a while and show it to Dr. Glaze, Prof. Hensley and a few others and tell them you just took it in as a fee. If any one should offer to borrow any of it tell him you have just paid it all out or that it was a collection you had made. In stating that you made it as a fee always be a little vague. Don't

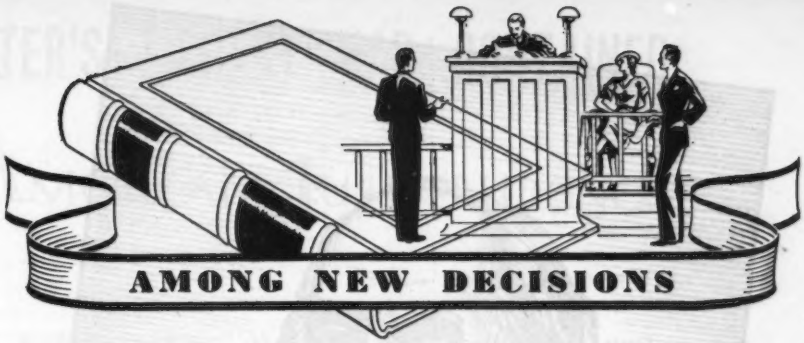
say you had a case or have been employed in one and received that fee for they may ask you what case and when and where it was tried or is to be tried, and persist in inquiries of this kind until it becomes very embarrassing. It is best to just say you were paid that as a retainer in the event certain litigation of which you are not permitted to speak takes place. Once in showing a party a large sum of money that I had collected, I was foolish enough to state that I had just been paid that sum to bring a suit in the near future. The fellow, I have sometimes thought maliciously and not from any interest he had in me, would ask me every time we met for more than a year, if I had ever brought that suit yet and sometimes he would speak of it in a large crowd and make it very embarrassing. So always be careful how you put it.

Well I must close. I am sorry I have no picture of our bar to send you. We were going to have a picture of the bar taken once or twice but one or two fellows we didn't want in our picture persisted in taking such an interest in the matter that we abandoned the project for fear they would insist on being taken with the rest.

Yours truly,

/S/ J. P. Buster.





AMONG NEW DECISIONS

Abatement and Revival — *survival of widow's allowance.* In Re Samson, — Neb —, 7 NW (2d) 60, 144 ALR 264, it was held that in determining whether the right to a widow's allowance under Comp. Stat. 1929, § 30–103, survives her death, the common-law rule was that it did not. This right is a purely personal one, which she alone can enjoy. When she dies, her right to support ends.

Annotation: Widow's or family allowance out of decedent's estate as surviving death or marriage of widow or minor children, or attainment of majority by children. 144 ALR 270.

Attorneys — *effect of pardon on disbarment.* In Re Stephenson, — Ala —, 10 So (2d) 1, 143 ALR 166, it was held that a full pardon with restoration of political and civil rights does not of itself restore to the office of attorney an attorney who has been disbarred because of his conviction; it merely opens the door that would otherwise be barred to him.

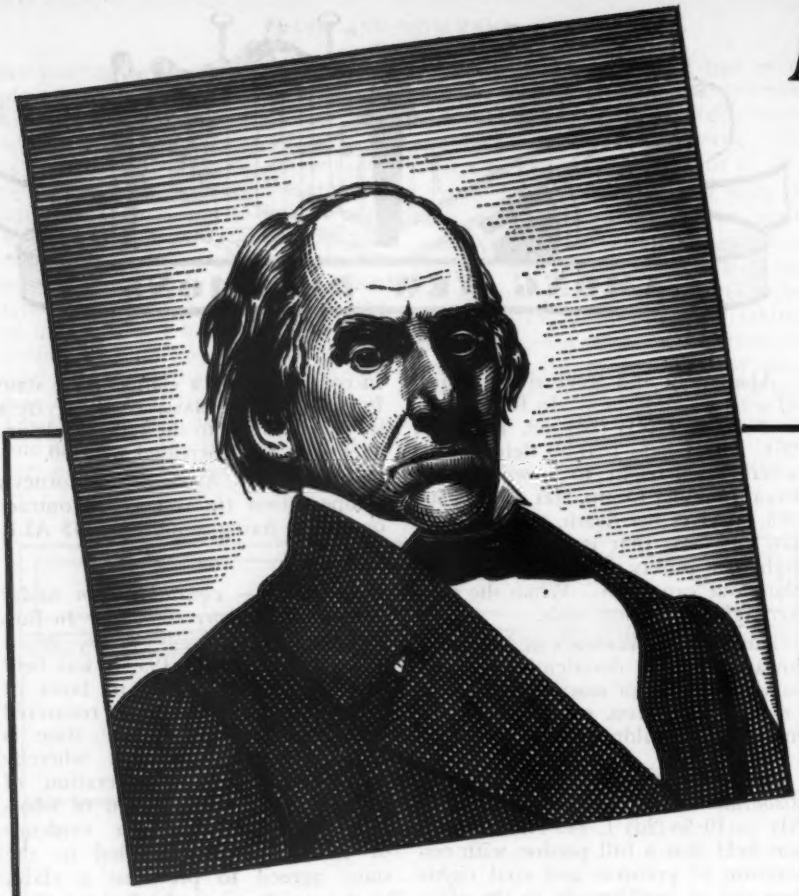
Annotation: Pardon as preventing disbarment of attorney or removal of officer or as nullifying disbarment or removal. 143 ALR 172.

Attorneys — *elements of compensation.* In Re Dehner's Estate, 230 Iowa 490, 298 NW 656, 143 ALR 669, it was held that an allowance by the lower court of $200 to an attorney for an executor for extraordinary services in compromising a claim of the state for inheritance taxes, resulting in a saving of $3,500 to the estate, held inadequate, and increased to $750.

Annotation: Amount of attorney's compensation (in absence of contract or statute fixing amount). 143 ALR 672.

Attorneys — *equitable lien under agreement to share recovery.* In Button v. Anderson, — Vt —, 28 A (2d) 404, 143 ALR 195, it was held that an equitable lien in favor of attorneys on the amount recovered for and collected by the state is created by an agreement whereby the attorneys, in consideration of a fee equal to 25 per cent of whatever sum of money or evidence of debt shall be awarded to the state, agreed to prosecute a claim of the state against the Federal Government, the inference that the attorneys look to the fund for payment rather than the mere contractual obligation of the state, dependent for its fulfilment upon legislative action, being a natural inference from their assumed knowledge that the governor can make no general promise of payment which can be fulfilled without an appropriation.

Annotation: Terms of attorney's contingent-fee contract as creating an equitable lien in his favor. 143 ALR 204.



Our present liberal contract, which gives present subscribers a liberal bonus, will be available for a short time only. It will be very much to your advantage to write for full information at once.

THE LAWYERS CO-OPERATIVE PUBLISHING CO.

BANCROFT-WHITNEY COMPANY

Attorneys — *regulating admission to the bar.* In State ex rel. Ralston v. Turner, 141 Neb 556, 4 NW (2d), 302, 144 ALR 138, it was held that where legislation from and after the adoption of the Constitution of 1875 until 1941 has not attempted in any manner to assert exclusive power to prescribe qualifications of applicants for admission to the bar, or to overrule any rule of the court relating to the qualifications of an applicant for admission to the bar, and the court has recognized that, within the limits of the police power, the legislature has prescribed minimum requirements for admission of an applicant to the bar; held, not to constitute acquiescence by the court that the legislature alone has the power to prescribe the qualifications of an applicant for admission to the bar.

Annotation: Power of legislature respecting admission to bar. 144 ALR 150.

Automobile Insurance — *commercial vehicle.* In American Casualty Co. v. Fisher, — Ga —, 23 SE (2d) 395, 144 ALR 533, it was held that a contract of insurance which indemnifies the insured as to liability growing out of the maintenance, use, or operation of an insured automobile, which, as provided in the policy, is to be used for commercial purposes, the term "commercial" being defined as "the transportation or delivery of goods, merchandise, or other materials, and uses incidental thereto, in direct connection with the named insured's business occupation," and the definition also provides that "uses of the automobile for the purposes stated include the loading and unloading thereof," does not protect the insured from liability arising out of the negligence of an operator of such insured automobile in installing the articles transported or in making physical "delivery" of them at a place within a building where such acts are connected in no way with the transportation itself.

Annotation: Coverage of liability policy on "commercial" vehicle. 144 ALR 537.

Automobiles — *proof of recklessness under guest statute.* In Harvey v. Clark, — Iowa —, 6 NW (2d) 144, 143 ALR 1141, it was held that a jury's finding of recklessness within the automobile guest statute is not justified by mere proof that the automobile was driven into the side of a moving passenger train at night when the driver apparently did not see a wig-wag crossing signal which was in operation.

Annotation: Conduct of operator of automobile at railroad crossing as gross negligence, recklessness, etc., within guest statute. 143 ALR 1144.

Charities — *effect of breach of trust.* In Pennebaker v. Pennebaker Home for Girls, 291 Ky 12, 163 SW (2d) 53, 143 ALR 389, it was held that where a charitable trust estate is not dependent for the continuance of its existence upon continued compliance with the terms of the trust, a breach of duty upon the part of the trustees will not be deemed to be an act constituting a forfeiture giving the heirs of the donor the right to claim ownership of the property, but will merely give cause for an action to be instituted by the attorney general or, in some instances, by the beneficiary of the trust, against the trustee, either for his removal or to require him properly to administer the purposes of the trust.

Comment Note: Failure of trustee to carry out purposes of charitable trust, or diversion of trust property to other purposes, as ground of suit by trustor or his heirs for adjudication of title to him or them. 143 ALR 395.

Chattel Mortgage — *increase of animals.* In Cambridge Production Credit Asso. v. Patrick, 140 Ohio St 521, 45 NE (2d) 751, 144 ALR 323, it was held that the mortgage of a dam and its increase creates upon the offspring subsequently born to the dam a valid and subsisting lien which is, as between the mortgagor and mortgagee, not limited to the period of suitable nurture.

Annotation: Lien which attaches under chattel mortgage of livestock to offspring subsequently born, as surviving period of suitable nurture. 144 ALR 330.

Criminal Law — *proof of former conviction under habitual criminal statute.* In State v. Lawson, — W Va —, 22 SE (2d) 643, 144 ALR 235, it was held that the charge in indictment of former conviction under the habitual criminal statute must be proved with the same degree of certainty as the charge of the substantive offense; but the evidence to establish such conviction should not be emphasized to the extent that the defendant will be prejudiced thereby.

Annotation: Overemphasis in proof of former conviction in connection with habitual criminal law, or unnecessary introduction of evidence in that regard, as prejudicial to accused. 144 ALR 240.

Dedication — *land for park purposes.* In Central Land Co. v. Grand Rapids, 302 Mich 105, 4 NW (2d) 485, 144 ALR 478, it was held that condition subsequent in deed to city that land shall be used solely for park, highway, street, or boulevard purposes is not breached by the agreement by the city with a third person whereby the latter is to drill for oil on land within the park area, it appearing that extraordinary care has been taken that the drilling operations shall not materially impair the use of the land for park purposes, that adjacent land is being developed for oil, that the city has earmarked all proceeds from the development for the use of park and boulevard purposes, and that the value of the total estimated production will probably not exceed one twentieth of the amount expended by the city for the improvement of the park property and construction of roadways therein, which is of material advantage to other lands owned by the grantors.

Annotation: Uses to which park property may be devoted. 144 ALR 486.

Divorce — *extreme cruelty.* In Kennedy v. Kennedy, 302 Mich 491, 5 NW (2d) 438, 143 ALR 617, it was held that a wife's unwarranted jealousy and unjustifiable accusations of infidelity, injuring the husband in his business and resulting in such strained relations that continuance together in the marriage state is no longer possible, constitutes "extreme cruelty," within the meaning of a statute as to divorce from bed and board.

Annotation: Accusation of improper relations as cruelty constituting ground for divorce or separation. 143 ALR 623.

Divorce — *full faith and credit.* In Williams v. State, — US —, 87 L ed (Adv 189), 63 S Ct 207, 143 ALR 1273, it was held that the full faith and credit clause of the Federal Constitution requires the extraterritorial recognition of the validity of a divorce decree obtained in accordance with the requirements of procedural due process in a state by a spouse who under the law of such state had acquired a bona fide domicil there, although the spouse who remained in the state of the original matrimonial domicil did not appear in the divorce suit and was not served with process in the state in which the divorce was granted.

Annotation: Duty of courts of one state to recognize and give effect to decrees of divorce rendered in other states, as affected by constructive service of process or lack of domicil at divorce forum. 143 ALR 1294.

Electricity — *liability for interruption of service.* In Arkansas Power & Light Co. v. Abboud, — Ark —, 164 SW (2d) 1000, 143 ALR 297, it was held that an electric power company is liable for breach of service contract with customer where interruption of service was due to want of inspection of its wires and other equipment, or to a delegation of authority in that regard to another customer who carelessly exercised it, as result of which a short circuit occurred, interrupting the service to the damage of the customers.

Annotation: Liability of electric power or light company to patron for interruption, failure, or inadequacy of service. 143 ALR 302.

Eminent Domain — *municipal condemnation for benefit of Federal Government.* In Delfeld v. City of Tulsa, — Okla —, 131 P (2d) 754, 143 ALR 1032, it was held that the fact that a portion of land so condemned for such use [municipal airport] was to be deeded to Federal Government as site of an aircraft plant operated under jurisdiction of government but in conjunction with entire airport did not preclude condemnation from being for a proper public use.

Annotation: Power of eminent domain as exercisable by state or one of its political subdivisions for benefit of Federal Government, or by Federal Government exclusively under state authority. 143 ALR 1040.

Equity — *requiring conveyance of property outside state.* In Berger v. Loomis, — Or —, 131 P (2d) 211, 144 ALR 636, it was held that a court of equity may properly exercise its jurisdiction in personam to require, at the suit of a judgment creditor, one to whom land in another state had been transferred by the judgment debtor to put it out of the reach of creditors, to convey it to a receiver to sell and pay the judgment out of the proceeds, where it appears that as the judgment creditor is barred by the statute of limitations of the state in which the land is situated from maintaining in that state any action on the judgment, no other remedy is available.

Annotation: Jurisdiction, and propriety of its exercise, to require real property in another state or country to be applied in satisfaction of debt (including the setting aside of a fraudulent conveyance thereof). 144 ALR 646.

Estoppel — *by conveyance to question after-acquired title.* In Perkins v. Rhodes, 192 Ga 331, 15 SE (2d) 426, 144 ALR 549, it was held that a conveyance by which the grantor transfers his "bond for title interest" in the land described, together with all of his "right, title, and interest" therein, for the purpose of securing a debt owing by him to the grantee, is one under which the benefit of after-acquired independent title inures to the benefit of the grantee, and the grantor and those holding under him are estopped thereafter to claim such after-acquired title as against such grantee, when the debt so secured remains unpaid. This is true although such conveyance contained no express covenant of warranty.

Annotation: Nature of conveyance or covenants which will create estoppel to assert after-acquired title in real property. 144 ALR 554.

Evidence — *parol evidence to prove assumption of mortgage.* In McRae v. Pope, 311 Mass 500, 42 NE (2d) 261, 143 ALR 540, it was held that in the absence of an assumption clause in a deed or of other covenants affecting

the result, parol evidence is admissible, even as between the immediate parties to the deed, to prove an assumption by the grantee of a mortgage debt secured by the property conveyed.

Annotation: Parol evidence in relation to assumption of mortgage debt by grantee of mortgaged property. 143 ALR 548.

Execution — *shares in Federal Savings and Loan Association.* In Benton's Apparel v. Hegna, — Minn —, 7 NW (2d) 3, 143 ALR 1148, it was held that the status and interest of a member of respondent association is not subject to the provisions of the Uniform Stock Transfer Act relating to levy of execution, and the share certificate need not be seized to make the levy effective.

Annotation: Uniform Stock Transfer Act as applicable to shares in savings and loan associations or building and loan associations. 143 ALR 1152.

Executors and Administrators — *own claim against estate.* In Winder v. Winder, 18 Cal (2d) 123, 114 P (2d) 347, 144 ALR 935, it was held that a statute which provides that if the executor is a creditor of the decedent, he shall file his claim with the clerk of the probate court, who must present it for allowance or rejection to the judge, does not apply where there is a coexecutor to whom the claim may be presented.

Annotation: Treatment of personal claim of executor or administrator antedating the death of decedent. 144 ALR 940.

Garnishment — *commissions of executors.* In Goodyear Tire & Rubber Co. v. Hay, — Ga —, 22 SE (2d) 496, 143 ALR 186, it was held that a creditor of one who is executor of a will cannot by garnishment force the executor to apply to the creditor's debt the commissions earned by him as executor.

Annotation: Right of creditors to reach by garnishment or other process, commissions of debtor, as executor, administrator, or trustee. 143 ALR 190.

Insurance — *corporate policy on life of officer, effect of termination of connection.* In Chapman v. Lipscomb-Ellis Co. — Ga —, 22 SE (2d) 393, 143 ALR 286, it was held that where a life insurance policy is issued to a corporate beneficiary having an insurable interest in the life of the person insured, and therefore is valid at the time of its procurement, such corporate beneficiary which has paid, as a business expense, the premiums on the policy may, upon the death of the person whose life was insured, collect the proceeds of the policy, although before his death the insured had terminated the business connection with such corporation which gave rise to the insurable interest. This is not forbidden by the public policy of this state.

Annotation: Insurance on life of officer for benefit of private corporation. 143 ALR 293.

Judges — *time for filing affidavit of disqualification.* In Price v. Featherstone, — Idaho —, 130 P (2d) 853, 143 ALR 407, it was held that the affidavit of prejudice contemplated by the statute providing that when a party makes and files an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before a district judge by reason of bias or prejudice of such judge, such affidavit to be filed with a clerk five days before the day appointed or fixed for the hearing or trial, may be filed within the specified time after the filing of a petition for modification of a previous decree of divorce, notwith-

standing that such an application is a continuance of the original case.

Annotation: Statute providing for change of judge or venue on ground of bias or prejudice as applicable to proceeding for modification of decree of divorce. 143 ALR 411.

Judgment — *what concluded by partition decree.* In Davis v. First Nat. Bank, — Tex —, 161 SW (2d) 467, 144 ALR 1, it was held that a decree in a partition suit between a devisee and the children of a deceased devisee, the two devisees having been given the use of the property for their natural lives "after which it will inure to their legal heirs," in which, in setting off one half of the property to the first devisee, the court vests it in her for her life only, the property to go at her death to her legal heirs, is not a conclusive adjudication that the interest of the first devisee is limited to a life estate, so as to preclude a holding, in a subsequent action, that, under the Rule in Shelley's Case, the first devisee is possessed of an interest in fee simple, where the vital issue in the former suit was the quantity of land, whether one fourth or one half, to which each of the parties was entitled, and it was unnecessary to decide whether the interest of the first devisee was a life estate or a fee simple.

Annotation: Judgment in partition as res judicata. 144 ALR 9.

Labor Relations Board — *unemployment insurance as "earnings."* In National Labor Relations Board v. Marshall Field & Co. 129 F (2d) 169, 144 ALR 394, it was held that benefits received by a discharged employee under a state unemployment compensation act are not within the term "earnings" as used in an order of the National Labor Relations Board directing the reinstatement of such employee and the payment to him of an amount equal to what he would have earned as wages during the period in question less his net "earnings" during such period.

Annotation: Amount which employee, or one wrongfully denied employment, has earned, or might have earned, in other employment, or received from other sources as affecting computation of amount to compensate him for loss of time due to unfair labor practice. 144 ALR 399.

Labor Unions — *duration of authority.* In Triboro Coach Corp. v. New York State Labor Relations Bd. 286 NY 314, 287 NY 647, 36 NE (2d) 315, 39 NE (2d) 276, 144 ALR 410, it was held that employees who have selected a labor union as their bargaining representative by joining and retaining membership therein, and who have allowed their representative to enter into a valid closed shop agreement, binding for a fixed period of time, are, while the contract is in force, free to select another union as their bargaining representative for the purpose of entering into further contracts with the employer upon the expiration of the existing contract.

Annotation: Continuance or termination of labor union's status or authority as bargaining agent. 144 ALR 444.

Libel and Slander — *attorney's conduct of case.* In High v. Supreme Lodge, L. O. M. — Minn —, 7 NW (2d) 675, 144 ALR 810, it was held that criticism and comment concerning services rendered by an attorney at law imputing to him gross neglect and unskilfulness, if untrue, are slanderous and actionable per se, even though the words spoken relate to a single case.

Annotation: Libel and slander: defamatory charge relating to conduct of attorney in particular case. 144 ALR 814.

Limitation of Actions — *malpractice.* In Hotelling v. Walther, — Or

—, 130 P (2d) 944, 144 ALR 205, it was held that statute of limitations did not begin to run against an action against a dentist for malpractice based upon his failure to diagnose the cause of, and properly treat, infection resulting from broken parts of wisdom tooth being left in the tooth socket, after partial extraction performed without original negligence, until the dentist, who flushed out the infected area, but took no radiograph, ceased his negligent treatment, the patient in the meantime having returned for treatment two or three times a month for over a year, during which time the condition became progressively worse, since the continued negligent treatment constituted but a single cause of action.

Annotation: When statute of limitations commences to run against actions against physicians, surgeons, or dentists for malpractice. 144 ALR 209.

Marriage — *presumed death of former spouse.* In Frank v. Frank, — Miss —, 10 So (2d) 839, 144 ALR 744, it was held that a second marriage contracted after a former spouse has been absent and not heard from for more than seven years, though inquiry has been made concerning him, to which a reply is received that he had drowned, is invalid, where it finally appears that he is still living and has also remarried, under a statute providing for a presumption of death from seven years' absence "unless proof be made that he was alive within that time."

Annotation: Validity of marriage celebrated while spouse by former marriage of one of the parties was living and undivorced, in reliance upon presumption from lapse of time of death of such spouse. 144 ALR 747.

Master and Servant — *abolishing assumption of risk.* In Tiller v. Atlantic Coast Line Railroad Co. — US —, 87 L ed (Adv 446), 63 S Ct —, 143 ALR 967, it was held that the effect of the 1939 amendment (53 Stat 1404, C 685, 45 USC § 54) to the Federal Employers' Liability Act, which provides that a carrier's employee shall not be held to have assumed the risks of his employment in any case where injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of the carrier, is to obliterate from the law every vestige of the doctrine of assumption of risk and to prevent any reliance on the doctrine for the purpose of establishing absence of negligence on the part of the employer.

Annotation: Construction and application of 1939 amendment of Federal Employers' Liability Act regarding assumption of risk. 143 ALR 978.

Master and Servant — *relationship for unemployment insurance.* In Peasley v. Murphy, 381 Ill 187, 44 NE (2d) 876, 143 ALR 414, it was held that women holding "industrial home workers' permits," who make women's neckwear for one registered as an employer under the act regulating industrial homework, out of materials furnished by him, under an arrangement whereby they are compensated on a piecework basis, are required to do enough work to earn 35 cents an hour, must turn in work at twenty-four hour intervals and must complete each order within a specified time, are, though at liberty to do work for others, and though they also have the status of housewives, employees in respect of whom their employer is bound to make a contribution under the Illinois Unemployment Compensation Act.

Annotation: Industrial homeworkers as within social security, unemployment compensation, fair labor standards or workmen's compensation act. 143 ALR 418.

Merger — *leasehold in fee.* In Mobley v. Harkins, — Wash (2d) —, 128 P (2d) 289, 143 ALR 88, it was held that a leasehold will not be held to have merged in a subsequently acquired fee, even if the owner of the lease intended that a merger should take place, where a merger would be to the prejudice of innocent third persons who had purchased from the then owner of the lease the equipment of a restaurant operated upon the leased property with the understanding that the lease would also be assigned to them.

Annotation: Merger of estate for years in fee or lesser estate. 143 ALR 93.

New Trial — *joint tort-feasors.* In Burton v. Roberson, — Tex —, 164 SW (2d) 524, 143 ALR 1, it was held that reversal of a judgment as to a motor company and its affirmance as to a police officer in an action for false imprisonment does not involve "substantial injustice" requiring the application of the common-law rule (not generally adhered to) that a verdict against tort-feasors may not be set aside as to one and permitted to stand as to the other, notwithstanding the contention that the verdict of $4,000 for compensatory damages was larger than if the police officer had been sued alone, based in part upon evidence (properly introduced in connection with a matter not relating to damages) as to the size and importance of the company's plan, from which, it is argued, the jury might have assumed its wealth, it appearing that the verdict awarded exemplary damages against the police officer for an amount in excess of that awarded against the company, both of whom had been represented by the same attorney, and that the police officer had no thought in the trial court that any injustice had been done him by joining the company as codefendant.

Annotation: Grant of new trial, or reversal of judgment on appeal as to one join tort-feasor, as requiring new trial or reversal as to other tort-feasor. 143 ALR 7.

Nuisances — *open-air motion-picture theater as.* In Anderson v. Guerrein Sky-Way Amusement Co. 346 Pa 80, 29 A(2d) 682, 144 ALR 1258, it was held that an open-air, sound-equipped motion-picture theater near a purely residential section held in view of the conditions attending its operation and incidents thereof to constitute a nuisance.

Annotation: Open-air motion-picture theater or other outdoor dramatic or musical entertainment as a nuisance. 144 ALR 1261.

Partition — *oil and gas, partition in kind or sale.* In Tuggle v. Davis, — Ky —, 165 SW (2d) 844, 143 ALR 1087, it was held that partition in kind, rather than sale, of land clearly susceptible of equal division so far as the surface is concerned should be ordered, although there is coal under the land and some possibility also of the existence of oil and gas, where, though the coal is mined for local consumption, the cost of mining it on a commercial basis is too great to be practicable, and there has been no lease sought or any prospect for a lease of the coal, and, although there are two gas wells within two to four miles on each side of the property, and an abandoned oil well near the property, there is no geological evidence that the property is oil or gas land, the existence of oil and gas being speculative only, not a reasonable expectancy.

Annotation: Right to partition in kind of mineral or oil and gas land. 143 ALR 1092.

Public Officers — *residence requirement.* In Rasin v. Leaverton, — Md —, 28 A (2d) 612, 143 ALR 1021, it was held that constitutional provision

that "no person shall be eligible to the office of state's attorney who has not resided for at least two years in the county . . . in which he may be elected" contemplates eligibility at the time of the election and requires residence for two years within the county before the election and not merely before the time of taking the office.

Annotation: Time as of which eligibility or ineligibility to office is to be determined. 143 ALR 1026.

Remainders — *action by.* In Louisville Cooperage Co. v. Rudd, 276 Ky 721, 124 SW (2d) 1063, 144 ALR 763, it was held that an action at law for damages may be maintained in Kentucky by a contingent remainderman against a third person who, acting under a purchase from the life tenant, wrongfully cuts timber on the land. The recovery will be conserved for those entitled thereto through the exercise by the court of its equity powers in the law action, as authorized under the statute providing for only one form of action.

Annotation: Right of owner of contingent or defeasible future interest to maintain action for relief in respect of property. 144 ALR 769.

Theaters — *injury from defective lighting.* In Bergstresser v. Minnesota Amusement Co. — SD —, 5 NW (2d) 49, 143 ALR 53, it was held that the proprietor or manager of a motion picture theater is not chargeable with breach of duty as regards lighting if he conforms to the rule worked out by technicians and experts on lighting as to how to light and how much light may be used in order to give the patrons the best protection from injury in moving about the building and also to give clear vision of the pictures without too much eyestrain, recognizing that there must be semi-darkness.

Annotation: Duty and liability as regards lighting conditions in theater. 143 ALR 61.

Wills — *interest under tenancy by entirety.* In Fairclaw v. Forrest, — App DC —, 130 F (2d) 829, 143 ALR 1154, it was held that the interest of a tenant by the entirety may be devised by him, effective upon the other tenant's death occurring first. Therefore, a devise of all the testator's realty includes realty originally held in a tenancy by the entirety but afterward acquired in full ownership through the death of the other tenant.

Annotation: Will as carrying enlarged interest of testator acquired subsequent to execution. 143 ALR 1162.

Annotations in Volume 144 A. L. R. on Legal Questions Arising Out of War Conditions

THE HUMOROUS SIDE

Weighted Justice. Martin Lubner, age 13, son of our contributor composed the following lines:

"Blonde and lovely and 200 pounds
Suing for alimony on malicious grounds
She won her case over her thinner mate
Because her side carried the greater weight."

Contributor: Nathan Lubner.
New York City.

Sounds Flat: WANTED—Laundry driver, wet, flat; married man preferred.
—*Ames (Ga.) Times.*

Privacy. The bride was very much worried at seeing twin beds in their bridal suite.

"What's the matter, dearest?" asked the bridegroom.

"Why, I thought we'd certainly have a room all to ourselves."—*Exchange.*

Some Politician. Judge F. L. Hawkins of the Texas Court of Criminal Appeals tells this one: One day a slightly drunk strolled through the Capitol and found his way into the Comptroller's Department. Pencil and paper in hand he informed the employees that he was auditing the office. Chief Clerk Bob Calvert sensed the situation and very gently but firmly placed his right hand upon the examiner's shoulder and moved toward the front. Upon reaching the door a slight shove and the drunk was out but not down. Turning to Calvert he said: "You are the besht politishun I've seen in Austin. You can pat a feller on the back and kick his breeches at the shame time—hic!"

Contributor: Ocie Speer.
Austin, Tex.

Old Habit. Officer—"Now tell me what is your idea of strategy."

Lawyer: "It is when you don't let the enemy know that you're out of ammunition, but keep right on firing."

Before O.P.A. And did you know that every year is Leap Year for pedestrians?
—*Exchange.*

A Difference. "For a great number of years, forty-four I think, there was a Judge of the Municipal Court in Richmond, Virginia, by the name of Crutchfield. One day there appeared before this Judge a colored lady charged with some minor offense. This lady brought another colored woman to testify in her behalf as a character witness. When the witness got ready to testify the Judge said to her, 'Mandy do you vouch for this woman's character and veracity?' Whereupon the witness replied, 'Judge I'se vouch for her character but I'se don't know about that veracity.'"

Contributor: Emerson W. Salisbury.
Charleston, W. Va.

The Queen. Lady of the House: "I hear your daughter is very happily married, Dinah."

Dinah: "Yas'm. Ah'll say she is! Her husband is skeered to death of her."
—*Cosgrove's.*

The Law's Delay. The following telephone conversation took place according to our contributor.

Is dis de jedge?
Yes; this is the County Judge.
Well! Jedge dis here am William Harvey.
Alright William go ahead.
Jedge I wants to get married.
Well! have you a license William?
Nor Sir, does ya hab to have a license?
Of course William. You can't get married without a license.
Well Jedge. When can I get a license?
Not until Monday William.
Lordee. Not 'til Monday.
That's right William.
Well listen hear Jedge. Cants you jus put us together temporarily ober de week end?

Richard P. Robbins, County Judge.
West Palm Beach, Fla.

Time Off. Shortly before retiring from the bench last January our contributor tried a prisoner for murder and the jury gave him a life sentence.

He had heard that someone had been allowed the time off he had been in jail awaiting trial.

When called before the court for sentence

and asked if he had anything to say, said yes, I would like for the court to allow me time off for the time I spent in jail awaiting trial.

Contributor: Judge J. W. Bird.
Enid, Okla.

Bias or Interest? (Clipping from New York Times June 3, 1943).

Abram R. Morrell was relieved from possible jury duty in a murder trial yesterday before Kings County Judge Peter J. Brancato when he informed the court he was a "tombstone and mausoleum salesman."

Contributor: Samuel Corwin.
New York City.

The Rationee's Lament

Tho dinner is meatless
And coffee be sweetless
This grouching is saneless
And perfectly painless.
Bananas are priceless;
Alas! Crap games diceless!
Cooking may be fireless,
And autos tireless.
Our pickles are spiceless;
Lean pantries get miceless.
Tho streets are still grassless,
Quite soon we'll be gasless.
Years glib talkin' didn't cease;
Too fond we grew of peace.
So pay the price of saps!
To Hell with all the Japs!
Vacations are tripless;
We get a bit shipless.
Its useless to blubber
This shortage of rubber.
So work with cheer an' a grin.
Forget the shortage of tin.
And while our day's ration
Grows quite to be a fashion,
We'll get old Hitler's goat
And drown him in the moat.
Lets set the Risin Sun
With blasts of ev'ry gun.

Contributor: Hunter A. Gibbes.
Columbia, S. C.

Hilly Country. Driving through the mountainous West Virginia, a tourist noticed a man with plow and team lying in the road.

"What happened?" asked the tourist.

The old farmer jerked a thumb upward and ejaculated: "Doggone it, I'm going to quit plowin' in that co'n field up thar. That's the third time I've fell out of it today."—*Exchange.*

A Problem in Ethics. "Father" said little Jacob, "what is this ethics I hear about in school?"

"Vell Jaky, I don't know how to say it good but I give you an example: Suppose a customer come in here and pay his bill wit a brand new twenty dollar bill. Ven he goes out I look at the bill careful and I find it is two new twenty dollar bills stuck together. Now Jaky, ethics is shall I tell my partner."

Contributor: W. Maxwell Burke.
Santa Ana, Calif.

Democtacy Prevaileth Over All. It seems that Mr. B was arrested for some small breach of the peace and was, in due time, hailed up for trial before a Justice of the Peace and the jury. This Justice was serving his first term; in fact, this was his first case, so naturally he was a little puzzled what to do when the attorney for the Defendant got up and said: "Your Honor, I move that this case be dismissed against my client."

Finally after a minute of agony and squirming around in his seat, the Justice said, very cautiously, "You have all heard the motion: those in favor, say Aye!"

Contributor: Robert A. Lawton.
Hancock, Mich.

Much Obliged. A New England spinster was struggling with a hot cup of coffee in a small town railroad station, trying to gulp it before the train pulled out. A truck driver, seated a couple of stools away, noted her plight, and seeing the conductor waving at the woman to come to the fore.

"Here ma'am, you can take my cup o' coffee. It's already saucered and blowed."
—*Exchange.*

Posted. Teacher: "Now, children, who can tell how much a pence is worth in American money?"

Jakey: "Vell, teacher, you can get a good pair for three dollars at my fadder's."
—*Exchange.*

Pass Word. That was some blonde you had with you last night. Where did you get her? Don't know. Just opened my billfold and there she was.—*Exchange.*

Some Punishment. First devil: "Ha, ha! Ho, Ho!"

Satan: "Why all the mirth?"

First devil: "I just put a woman into a room with a thousand hats and no mirror."
—*Exchange.*

Drafted. George ——— had charge of the entertainment during the past year. His birth-provoking antics were always the life of the party and he will be greatly missed.
—*Willard (Ohio) Times.*

Scienter. The Solicitor was in possession of a pair of overshoes; the Judge seems to have been without. One wet day the Solicitor found his overshoes gone. The Judge

had preceded him to the Court House. It developed that the Judge decided that he, too, needed overshoes, so just "borrowed" them.

After Court, the Judge and several lawyers were gathered at the hotel engaging in idle talk on various and sundry subjects, when the Solicitor reported the incident of the overshoes and appealed to a third lawyer as to his best procedure. Without hesitation, the lawyer replied: "Why, that's simple, just indict him for receiving stolen goods *knowing them to have been stolen.*" The laugh appears to be on the Solicitor.

Contributor: Jos. P. Pippen.
Littleton, N. C.

Qualified. Landlord (to prospective tenant): "You know we keep it very quiet and orderly here. Do you have any children?"

"No."

"A piano, radio, or victrola?"

"No."

"Do you play any musical instrument? Do you have a dog, cat, or parrot?"

"No, but my fountain pen scratches a little sometimes."

Unique Wedding. A misprint in a New Haven, Conn. newspaper rates "The Humorous Side" according to a subscriber.

A covered bridge was the scene of a unique wedding here recently.

Mrs. Harriet Davis Auger of Putnam and Claude West of East Hampton were married last Thursday on the old bridge spanning the Salmon River which divides the two towns.

Because the license was obtained in East Hampton, the contracting parties made certain *the ceremony was performed on the west side of the bride's center beam, which marks the town line.* The Rev. A. Wallace Canney, pastor of the Westchester Congregational church, officiated.

Contributor: Samuel Greenberg.
New Haven, Conn.

Success Secret. A young man of burning ambition approached a great merchant and begged him to reveal the secret of his success.

"There is no easy secret," pronounced the g. m. "You must jump at your opportunity."

"But, sir, how can I know when my opportunity comes?"

"You can't," declared the merchant. "You've just got to keep jumping."

—*Postage Stamp.*

Mosquito Romance. Flying via radio beam may be strictly twentieth-century to mankind, but it is old stuff to the mosquito, who has been using it for centuries to solve the boy-meet-girl problem, according to Prof. C. L. Fluke of the University of Wisconsin.

The professor says that when a girl mosquito feels romantic, she buzzes her wings like crazy, sending out a beam of 350 vibrations per second.

This vibration goes forth and tickles the antennae of a boy mosquito in the vicinity, who turns around until he gets a buzz that is equally strong on both feelers. Then he's off, like any stricken lover, heading straight for his vibrating future wife—right on the beam. Won't even stop to bite a trout fisherman, the professor claims.

We don't know just how the girl gets through to the insect of her dreams, or whether all the males in the neighborhood come sailing in on the same beam.

It doesn't really bother us, though. Never did see a mosquito we could love, anyway.

—*Postage Stamp.*

Jurisdictional feud. Generally speaking, there are two inferior courts of criminal jurisdiction in the City of New York. The Magistrates' Courts have summary jurisdiction to try petty offenses and are one man tribunals where persons charged with felonies and various misdemeanors are arraigned and if a prima facie case is made out against them are held for trial before a higher tribunal. The Court of Special Sessions is composed of three trial justices, who preside over all cases, involving misdemeanors exclusively.

One fine Monday morning, the late Magistrate Weil was presiding at the Harlem Magistrates' Court when an old sot of the female of the species was brought before him, charged with public intoxication. The policeman who made the arrest had his hands full in bringing the defendant before the court for so inebriated was she that he had to practically drag her before the bench.

Suddenly the prisoner looked up at the Court and exclaimed, "My Gawd, wha's this? The Court of Special Sessions?" Evidently, the defendant was seeing not "double," but "triple"!

Whereupon Magistrate Weil turned to the court stenographer and stated for the record, "I order this defendant remanded to the station house for three days. In three days' time, the reduction cure will aid this defendant in being able to see that this is the Magistrates' Court and not the Court of Special Sessions. Next case."

Contributor: Samuel W. Corwin.
New York City.

"Queen of Earthly Queens." I hereby constitute and appoint my well beloved wife Helen Mar who has hung for years like a priceless jewel about my neck yet never lost her lustre the "Queen of Earthly Queens" my executrix with full power to do all things necessary in the premises. (Vol. 3 of

Wills, p. 7, County Clerk's office, Adams County, Illinois. Sept. 12, 1846)

H. S. Cooley.

Contributor: Rolland M. Wagner.
Quincy, Ill.

Success to Young Lawyers

May the law never your pleasure bar,
Or your future happiness mar;
While you are near or ever so far,
May your pleadings all be par;
With Juror's as attractive as Heddy LaMar,
And your opponents, beat the tar;
And never aspire to be a political Czar,
Forbeit to ever your conscience jar;
Ever possessing a nice motor car,
Language never stronger than, by gar;
The gates of society ever ajar,
In your profession, a shining star;
On your reputation, never a scar,
While you are practicing at the bar.

Contributor: C. Eugene Smith.
Columbus, Ohio.

Down—Not Out. How did you find your husband when you returned from your vacation? Oh, I just happened to stumble over him while I was cleaning up the cellar.
—*Exchange.*

Remorse Also. When a man paints the town red he comes home with that dark brown taste.—*Exchange.*

Circus Performer. WANTED—A place to show her wares by an antique lady with a Spanish chest and other odd things.
—*Cold Springs (Ga.) Times.*

Business first. WANTED—A salesgirl; must be respectable till after Christmas.
—*Belen (N. M.) News.*

Useless Ad. One advertisement for a husband brought a Massachusetts woman 19 reptiles. She is still unmarried.
—*Abilene (Texas) Paper.*

Necessary Repairs. Alice ——— has been engaged as stewardess and social hostess aboard the S.S. *Alexandria,* which sails tomorrow. Before leaving port she will have her barnacles scraped.
—*East Coast Shipping Record.*

Good Shot. A full charge of shot struck Mr. ——— squarely in the back door of the henhouse.—*Peoria (Ill.) Star.*

English Golf Rules

Playing golf in this country now has its difficulties in the way of gasoline and fuel. However, ardent golfers are not easily thwarted as may be seen by the wartime golf rules adopted by the Richmond Golf Club, located near London, England.

Following is the club's emergency code:

1. Players are asked to collect bomb and shrapnel splinters to save these causing damage to the mowing machines.

2. In competitions, during gunfire or while bombs are falling, players may take cover without penalty for ceasing play.

3. The positions of known, delayed action bombs are marked by red flags at a reasonably, but not guaranteed, safe distance therefrom.

4. Shrapnel and/or bomb splinters on the Fairways, or in Bunkers within a club's length of a ball. may be moved without penalty, and no penalty shall be incurred if a ball is thereby caused to move accidentally.

5. A ball moved by enemy action may be replaced, or if lost or destroyed, a ball may be dropped not nearer the hole without penalty.

6. A ball lying in a crater may be lifted and dropped not nearer the hol-, preserving the line to the hole, without penalty.

7. A player whose stroke is affected by the simultaneous explosion of a bomb may play another ball from the same place. Penalty one stroke.—*Printers Ink.,* February 12, 1943.

Perhaps! His face was a striking one, and even without his clothes people would have turned to look at him.
—*London (Eng.) Times.*

Goof for Sale. FOR SALE—A violin, by a young man in good condition, except for a loose peg in the head.
—*Wabasha (Minn.) Herald.*

Misprint. Lady with license will drive your car; don't mind long strips. Bailey 2355.—*Markham, Mass., Times.*

Suspense

Breathes there a man
With soul so dead
Who never to his wife hath said:
"When do we eat?"
—*Exchange.*

Grain for Divorce-mill. The marriage of Miss Anna ——— and Willis ———, which was announced in this paper a few weeks ago, was a mistake and we wish to correct.
—*Golden (Colo.) Paper.*

Contributory Negligence

Here lies a pedestrian,
He's as cold as ice.
He jumped only once when
He should have jumped twice.

The Cause. His wife, determined to cure him of his evil ways, with the aid of a sheet and an electric torch, transformed herself into a fair resemblance of a ghost. She went in and shook the drunkard.

"Wash that?" murmured the toper.

"This is the devil," came the answer in sepulchral tones.

"Shake hands, old horsh, I married your sister."—*Exchange.*

Monopoly. The modern gal's slogan is "Every man for herself."—*Exchange.*

The Test. Our electrician got himself a new helper and the two were at work on an emergency chore.

"Say Bill," said he to the helper, "take hold of this wire."

"O. K."

"Feel anything?"

"Nope."

"Well, then," warned the electrician, "don't touch the other one, it's got over 5,000 volts."

—*Postage Stamp.*

Heavy Hand. Our British Intelligence just cabled to report that, en route to a camp in England, a colored member of the A. E. F. became involved in a spot of poker with some British soldiers.

They drew.

"I'll bet one pound," said a Briton.

The American studied his four aces.

"I dunno how you all counts your money," he declared, "but I'll jes raise you to one ton."

—*Postage Stamp.*

Preparing for Invasion. In the fighting South we are ready for invasion. Or so it seems from the first draft of the county budget estimate.

I dictated each item, including an estimate for "Coroners' Inquests."

It came back: "Foreigners' Inquests."

Contributor: John F. Matthews,
Louisburg, N. C.

Oh, Gulls! "What a purty bird that is!"

"Yeah, it's a gull."

"I don't care if its a gull or a boy; it's purty."

—*Exchange.*

The Points. Customer: "I thought I saw some soup on the bill of fare."

Waiter: "There was some, but I wiped it off."

—*Exchange.*

Holdup. First Kangaroo: "Annabelle, where is the baby?"

Second Kangaroo: "My goodness, I've had my pocket picked."

—*Exchange.*

He will be sewing you. "The doctor will see you inside," said the nurse as she helped the patient onto the operating table.

—*Exchange.*

The Strong. Goliath: "Why don't you stand up here and fight me?"

David: "Don't hurry me, big boy; wait till I get a little boulder."

—*Exchange.*

Afterthought. The judge of a traffic court in Indiana received the following letter:

"My Dear Judge:

Life becomes more complicated as my tires become thinner. This afternoon I had to take my daughter into the Doctor's to get a diptheria shot, as the school had requested this of all parents. My boy was badly in need of shoes, so I tried to do both errands the same afternoon. Our school does not let out until 4:15 so you see I did not have a great deal of time. Before I left I had to get my dinner on to cook so it would be ready when we got home but not burned to a crisp. This was my afternoon and the cause of my driving 42 miles an hour on a boulevard where there were few cars. I was already stopped at the traffic at 16th street when the policeman arrested me.

Now I would like to know if I could save twenty-five miles of rubber and settle this by mail. We people who live in the country, some miles from a bus line are concerned about our tires.

I don't wish to be guilty of contempt of court but would like to do this if possible.

Yours truly,"

The case was continued to a night court session, and the defendant came in, pleaded guilty and paid a nominal fine, and then mentioned to the Judge, "What do I do about this one?" handing him a ticket she had recieved while coming to court, for making a prohibited left turn. The Judge then had to fine her on the second charge, which no doubt added insult to injury, as far as she was concerned.

Contributor: Samuel B. Huffman,
Indianapolis, Ind.

abelle,

, I've

nge.

or will
helped

nge.

't you

; wait

nge.

c court
ter:

ny tires
had to
to get
quested
adly in
errands
oes not
ot have
had to
ould be
rned to
and the
ur on a
. I was
h street

uld save
ttle this
country,
oncerned

empt of
possible.
truly,"

ht court
pleaded
nd then
do about
had re-
making a
hen had
which no
ur as she

man,
s, Ind.